

1 AN ACT concerning criminal law.

2 WHEREAS, Factual claims of torture, which are determined to
3 be credible, can most effectively and efficiently be evaluated
4 through complete and independent investigation and review of
5 the same; therefore

6 **Be it enacted by the People of the State of Illinois,**
7 **represented in the General Assembly:**

8 Section 1. Short title. This Act may be cited as the
9 Illinois Torture Inquiry and Relief Commission Act.

10 Section 5. Definitions. As used in this Act:

11 (1) "Claim of torture" means a claim on behalf of a living
12 person convicted of a felony in Illinois asserting that he was
13 tortured into confessing to the crime for which the person was
14 convicted and the tortured confession was used to obtain the
15 conviction and for which there is some credible evidence
16 related to allegations of torture committed by Commander Jon
17 Burge or any officer under the supervision of Jon Burge.

18 (2) "Commission" means the Illinois Torture Inquiry and
19 Relief Commission established by this Act.

20 (3) "Director" means the Director of the Illinois Torture
21 Inquiry and Relief Commission.

22 (4) "Victim" means the victim of the crime, or if the

1 victim of the crime is deceased, the next of kin of the victim.

2 Section 10. Purpose of Act. This Act establishes an
3 extraordinary procedure to investigate and determine factual
4 claims of torture related to allegations of torture that shall
5 require an individual to voluntarily waive rights and
6 privileges as described in this Act.

7 Section 15. Commission established.

8 (a) There is established the Illinois Torture Inquiry and
9 Relief Commission. The Illinois Torture Inquiry and Relief
10 Commission shall be an independent commission under the
11 Administrative Office of the Illinois Courts for
12 administrative purposes.

13 (b) The Administrative Office of the Illinois Courts shall
14 provide administrative support to the Commission as needed. The
15 Director of the Administrative Office of the Illinois Courts
16 shall not reduce or modify the budget of the Commission or use
17 funds appropriated to the Commission without the approval of
18 the Commission.

19 Section 20. Membership; chair; meetings; quorum.

20 (a) The Commission shall consist of 8 voting members as
21 follows:

22 (1) One shall be a Circuit Court Judge, with 10 years
23 or less seniority.

1 (2) One shall be a former prosecuting attorney.

2 (3) One shall be a law school professor.

3 (4) One shall be engaged in the practice of criminal
4 defense law.

5 (5) Three shall be members of the public who are not
6 attorneys and who are not officers or employees of the
7 Judicial branch.

8 (6) One shall be a former public defender.

9 The Commission shall be appointed as follows:

10 2 members appointed by the Governor;

11 2 members appointed by the President of the Senate;

12 One member appointed by the Minority Leader of the
13 Senate;

14 2 members appointed by the Speaker of the House of
15 Representatives; and

16 One member appointed by the Minority Leader of the
17 House of Representatives.

18 After an appointee has served his or her first 3-year term,
19 the subsequent appointment or reappointment may be by the
20 initial appointing authority.

21 (a-1) The appointing authority shall also appoint
22 alternate Commission members for the Commission members he or
23 she has appointed to serve in the event of scheduling
24 conflicts, conflicts of interest, disability, or other
25 disqualification arising in a particular case. The alternate
26 members shall have the same qualifications for appointment as

1 the original member. In making the appointments, the appointing
2 authority shall make a good faith effort to appoint members
3 with different perspectives of the justice system. The
4 appointing authority shall also consider geographical
5 location, gender, and racial diversity in making the
6 appointments.

7 (b) The judge who is appointed as a member under subsection
8 (a) shall serve as Chair of the Commission. The Commission
9 shall have its initial meeting no later than January 31, 2009,
10 at the call of the Chair. The Commission shall meet a minimum
11 of once every 6 months and may also meet more often at the call
12 of the Chair. The Commission shall meet at such time and place
13 as designated by the Chair. Notice of the meetings shall be
14 given at such time and manner as provided by the rules of the
15 Commission. A majority of the members shall constitute a
16 quorum. All Commission votes shall be by majority vote.

17 Section 25. Terms of members; compensation; expenses.

18 (a) Of the initial members, 2 appointments shall be for
19 one-year terms, 3 appointments shall be for 2-year terms, and 3
20 appointments shall be for 3-year terms. Thereafter, all terms
21 shall be for 3 years. Members of the Commission shall serve no
22 more than 2 consecutive 3-year terms plus any initial term of
23 less than 3 years. Unless provided otherwise by this Act, all
24 terms of members shall begin on January 1 and end on December
25 31.

1 Members serving by virtue of elective or appointive office,
2 may serve only so long as the office holders hold those
3 respective offices. The Chief Judge of the Cook County Circuit
4 Court may remove members, with cause. Vacancies occurring
5 before the expiration of a term shall be filled in the manner
6 provided for the members first appointed.

7 (b) The Commission members shall receive no salary for
8 serving. All Commission members shall receive necessary
9 subsistence and travel expenses.

10 Section 30. Director and other staff. The Commission shall
11 employ a Director. The Director shall be an attorney licensed
12 to practice in Illinois at the time of appointment and at all
13 times during service as Director. The Director shall assist the
14 Commission in developing rules and standards for cases accepted
15 for review, coordinate investigation of cases accepted for
16 review, maintain records for all case investigations, prepare
17 reports outlining Commission investigations and
18 recommendations to the trial court, and apply for and accept on
19 behalf of the Commission any funds that may become available
20 from government grants, private gifts, donations, or bequests
21 from any source.

22 Subject to the approval of the Chair, the Director shall
23 employ such other staff and shall contract for services as is
24 necessary to assist the Commission in the performance of its
25 duties, and as funds permit.

1 The Commission may meet in an area provided by the
2 Administrative Office of the Illinois Courts. The
3 Administrative Office of the Illinois Courts shall provide
4 office space for the Commission and the Commission staff.

5 Section 35. Duties. The Commission shall have the following
6 duties and powers:

7 (1) To establish the criteria and screening process to
8 be used to determine which cases shall be accepted for
9 review.

10 (2) To conduct inquiries into claims of torture with
11 priority to be given to those cases in which the convicted
12 person is currently incarcerated solely for the crime to
13 which he or she claims torture by Jon Burge or officers
14 under his command, or both.

15 (3) To coordinate the investigation of cases accepted
16 for review.

17 (4) To maintain records for all case investigations.

18 (5) To prepare written reports outlining Commission
19 investigations and recommendations to the trial court at
20 the completion of each inquiry.

21 (6) To apply for and accept any funds that may become
22 available for the Commission's work from government
23 grants, private gifts, donations, or bequests from any
24 source.

1 Section 40. Claims of torture; waiver of convicted person's
2 procedural safeguards and privileges; formal inquiry;
3 notification of the crime victim.

4 (a) A claim of torture may be referred to the Commission by
5 any court, person, or agency. The Commission shall not consider
6 a claim of torture if the convicted person is deceased. The
7 determination of whether to grant a formal inquiry regarding
8 any other claim of torture is in the discretion of the
9 Commission. The Commission may informally screen and dismiss a
10 case summarily at its discretion.

11 (b) No formal inquiry into a claim of torture shall be made
12 by the Commission unless the Director or the Director's
13 designee first obtains a signed agreement from the convicted
14 person in which the convicted person waives his or her
15 procedural safeguard and privileges, agrees to cooperate with
16 the Commission, and agrees to provide full disclosure regarding
17 inquiry requirements of the Commission. The Waiver under this
18 subsection does not apply to matters unrelated to a convicted
19 person's claim of torture. The convicted person shall have the
20 right to advice of counsel prior to the execution of the
21 agreement and, if a formal inquiry is granted, throughout the
22 formal inquiry. If counsel represents the convicted person,
23 then the convicted person's counsel must be present at the
24 signing of the agreement. If counsel does not represent the
25 convicted person, the Commission Chair shall determine the
26 convicted person's indigency status and, if appropriate, enter

1 an order for the appointment of counsel for the purpose of
2 advising on the agreement.

3 (c) If a formal inquiry regarding a claim of torture is
4 granted, the Director shall use all due diligence to notify the
5 victim in the case and explain the inquiry process. The
6 Commission shall give the victim notice that the victim has the
7 right to present his or her views and concerns throughout the
8 Commission's investigation.

9 (d) The Commission may use any measure provided in the Code
10 of Civil Procedure and the Code of Criminal Procedure of 1963
11 to obtain information necessary to its inquiry. The Commission
12 may also do any of the following: issue process to compel the
13 attendance of witnesses and the production of evidence,
14 administer oaths, petition the Circuit Court of Cook County or
15 of the original jurisdiction for enforcement of process or for
16 other relief, and prescribe its own rules of procedure. All
17 challenges with regard to the Commission's authority or the
18 Commission's access to evidence shall be heard by the
19 Commission Chair in the Chair's judicial capacity, including
20 any in camera review.

21 (e) While performing duties for the Commission, the
22 Director or the Director's designee may serve subpoenas or
23 other process issued by the Commission throughout the State in
24 the same manner and with the same effect as an officer
25 authorized to serve process under the laws of this State.

26 (f) All State discovery and disclosure statutes in effect

1 at the time of formal inquiry shall be enforceable as if the
2 convicted person were currently being tried for the charge for
3 which the convicted person is claiming torture.

4 (g) If, at any point during an inquiry, the convicted
5 person refuses to comply with requests of the Commission or is
6 otherwise deemed to be uncooperative by the Commission, the
7 Commission shall discontinue the inquiry.

8 Section 45. Commission proceedings.

9 (a) At the completion of a formal inquiry, all relevant
10 evidence shall be presented to the full Commission. As part of
11 its proceedings, the Commission may conduct public hearings.
12 The determination as to whether to conduct public hearings is
13 solely in the discretion of the Commission. Any public hearing
14 held in accordance with this Section shall be subject to the
15 Commission's rules of operation.

16 (b) The Director shall use all due diligence to notify the
17 victim at least 30 days prior to any proceedings of the full
18 Commission held in regard to the victim's case. The Commission
19 shall notify the victim that the victim is permitted to attend
20 proceedings otherwise closed to the public, subject to any
21 limitations imposed by this Act. If the victim plans to attend
22 proceedings otherwise closed to the public, the victim shall
23 notify the Commission at least 10 days in advance of the
24 proceedings of his or her intent to attend. If the Commission
25 determines that the victim's presence may interfere with the

1 investigation, the Commission may close any portion of the
2 proceedings to the victim.

3 (c) After hearing the evidence, the full Commission shall
4 vote to establish further case disposition as provided by this
5 subsection. All 8 voting members of the Commission shall
6 participate in that vote.

7 If 5 or more of the 8 voting members of the Commission
8 conclude there is sufficient evidence of torture to merit
9 judicial review, the case shall be referred to the Chief Judge
10 of the Circuit Court of Cook County by filing with the clerk of
11 court the opinion of the Commission with supporting findings of
12 fact, as well as the record in support of such opinion, with
13 service on the State's Attorney if another State's Attorney is
14 appointed other than Richard Devine in non-capital cases and
15 service on both the State's Attorney and Attorney General in
16 capital cases.

17 If less than 5 of the 8 voting members of the Commission
18 conclude there is insufficient evidence of torture to merit
19 judicial review, the Commission shall conclude there is
20 insufficient evidence of torture to merit judicial review. The
21 Commission shall document that opinion, along with supporting
22 findings of fact, and file those documents and supporting
23 materials with the court clerk in the circuit of original
24 jurisdiction, with a copy to the State's Attorney and the chief
25 judge.

26 The Director of the Commission shall use all due diligence

1 to notify immediately the victim of the Commission's conclusion
2 in a case.

3 (d) Evidence of criminal acts, professional misconduct, or
4 other wrongdoing disclosed through formal inquiry or
5 Commission proceedings shall be referred to the appropriate
6 authority. Evidence favorable to the convicted person
7 disclosed through formal inquiry or Commission proceedings
8 shall be disclosed to the convicted person and the convicted
9 person's counsel, if the convicted person has counsel.

10 (e) All proceedings of the Commission shall be recorded and
11 transcribed as part of the record. All Commission member votes
12 shall be recorded in the record. All records and proceedings of
13 the Commission are confidential and are exempt from public
14 record and public meeting laws except that the supporting
15 records for the Commission's conclusion that there is
16 sufficient evidence of torture to merit judicial review,
17 including all files and materials considered by the Commission
18 and a full transcript of the hearing before the Commission,
19 shall become public at the time of referral to the court.
20 Commission records for conclusions of insufficient evidence of
21 torture to merit judicial review shall remain confidential,
22 except as provided in subsection (d).

23 Section 50. Post-commission judicial review.

24 (a) If the Commission concludes there is sufficient
25 evidence of torture to merit judicial review, the Chair of the

1 Commission shall request the Chief Judge of the Circuit Court
2 of Cook County for assignment to a trial judge for
3 consideration. The court may receive proof by affidavits,
4 depositions, oral testimony, or other evidence. In its
5 discretion the court may order the petitioner brought before
6 the court for the hearing. If the court finds in favor of the
7 petitioner, it shall enter an appropriate order with respect to
8 the judgment or sentence in the former proceedings and such
9 supplementary orders as to rearraignment, retrial, custody,
10 bail or discharge as may be necessary and proper.

11 (b) The State's Attorney, or the State's Attorney's
12 designee, shall represent the State at the hearing before the
13 assigned judge.

14 Section 55. No right to further review of decision by
15 Commission; convicted person retains right to other
16 postconviction relief.

17 (a) Unless otherwise authorized by this Act, the decisions
18 of the Commission are final and are subject to further review
19 by appeal, certification, writ, motion, or otherwise.

20 (b) A claim of torture asserted through the Commission
21 shall not adversely affect the convicted person's rights to
22 other postconviction relief.

23 Section 60. In order to allow staggered terms of members of
24 the Illinois Torture Inquiry and Relief Commission, the

1 Commission members identified in paragraphs (1), (2), and (4)
2 of subsection (a) of Section 20 shall be appointed to initial
3 terms of 2 years, the Commission members identified in
4 paragraph (5) of subsection (a) of Section 20 shall be
5 appointed to initial terms of 3 years, and the Commission
6 members identified in paragraphs (3) and (6) of subsection (a)
7 of Section 20 shall be appointed to initial terms of one year.

8 Section 65. Beginning January 1, 2010, and annually
9 thereafter, the Illinois Torture Inquiry and Relief Commission
10 shall report on its activities to the General Assembly and the
11 Governor. The report may contain recommendations of any needed
12 legislative changes related to the activities of the
13 Commission. The report shall recommend the funding needed by
14 the Commission, the State's Attorneys, and the Department of
15 State Police in order to meet their responsibilities under this
16 Act. Recommendations concerning the State's Attorneys or the
17 Department of State Police shall only be made after
18 consultations with the Illinois State's Attorneys Association
19 and the Attorney General.

20 Section 70. The Administrative Office of the Illinois
21 Courts shall report to the General Assembly and the Chief
22 Justice no later than December 31, 2011, and no later than
23 December 31 of every third year, regarding the implementation
24 of this Act and shall include in its report the statistics

1 regarding inquiries and any recommendations for changes. The
2 House of Representatives and the Senate shall refer the report
3 to the appropriate committees for their review.

4 Section 75. The initial members of the Illinois Torture
5 Inquiry and Relief Commission shall be appointed not later than
6 October 1, 2008. No claims of torture may be filed with the
7 Commission until November 1, 2008.

8 Section 80. This Act applies to claims of torture filed on
9 or before December 31, 2013.

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.